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THE PROVISIONAL LEGAL PROTECTION IN THE PAPYRI

Under provisional legal protection we understand the official activity which aims at the settlement of a provisional situation. This settlement can take place before, during the law-suit or after the passing of a sentence during the executorial proceedings and be performed in the way of different legal measures (injunctions). In the following we will concern ourselves with these measures which are very numerous in the Greco-egyptian law.

I. The seizure

The seizure as a temporary arrangement will be most often employed to prevent a frustration or a considerable aggravation of the future execution of a claim by the deeds of the debtor.

The technical term for the designation of the seizure is κατεγγυᾶν or διεγγυᾶν¹ besides the word συσχεῖν², κατασχεῖν³ or συνέχειν⁴; once for the seizure of immovables the term θεῖναι ἐν πίστει is applied⁵. In BGU 1757 (52-1 B.C.) is used the descriptive form (v. 3 ff) Τὸ μὲν οὖν γέννημα τοῦ δηλουμένου αὐτοῦ κλήρου — ἔστω ἐπίμονον μέχρι τοῦ παρ' ἡμῶν προσφωνηθῆναι τι.

¹ Amh. 35₂₉ = *W. Chr.* 68 (132 B.C.) (for corn) προσκαλεσάμενος τὸν Παλαῆτιν κατεγγεγύηκας τὸν πυρόν τοῦ Σοκνοπαίου θεοῦ μεγάλου; Hib. 48₃₋₄ (255 B.C.) διεγγυημένοι κληροῖ; Frankf. 7 Col. II, 10, 11 (218—17 B.C.) cf. *Partsch, Bürgschaftsrecht* p. 63 note; 124 note 7; p. 309 note 2; on the other hand Tebt. 53₂₅ (110 B.C.) κατεγγυ(ᾶν) αὐτῶν τοὺς κληρούς; BGU 1827₇ (52—1 B.C.) concerning γέννημα κατεγγυῆσαι τὸ — οἰνικὸν γέννημα; BGU 1825₂₁ (without date) (concerning the whole property) πάντων κατενγεγυημένων κτλ.

² Tebt. 772₈ (236 B.C.) συσχεῖν τὰ γενήματα κτλ.

³ Edg.-Zen. 57₁ (251—248 B.C.) κατασχεῖν τὰ γενήματα κτλ.

⁴ Ent. 85 (1-st year of Philopator) Recto (v. 2-3) ἵνα διεθῆ ὁ σῖτος — περὶ οὗ ἔγραψεν Διοφάνης Δεινίαι συνέχειν.

⁵ Tebt. 14₉₋₁₀ = *M. Chr.* 42 (114 B.C.); as for the meaning of these words comp. on the one hand *Preisigke*, s. v. τίθημι, on the other hand *Mitteis, Privatrecht* 375₇₃; the editors translate: „to be placed in bond”.

The seizure follows from a legal prescription⁶, from an order of the authority at its own discretion⁷ or at the motion of the party⁸. The arrangement takes place through a *χρηματισμὸς κατεγγυήσεως*⁹ or through an oral decision passed during the proceedings.

The seizure can include either the whole property¹⁰, a part of the property¹¹ or — that most commonly happens — the *γενήματα* of the estate¹². Once the seizure of the object of the dispute is to be found¹³. Claims can be seized too¹⁴.

⁶ *Gnom.* § 3 cf. Plaumann, *Idioslogos* 47.

⁷ Edg.-Zen. 57 (248 B.C.); Frankf. 7 (218—7 B.C.); Tebt. 24₉₇ (117 B.C.) ἀναγράψαμεν... οὖν τὰ ὑπάρχοντα αὐτοῖς; Tebt. 14 (114 B.C.), cf. Mitteis, l. c. 375₇₃; Tebt. 27₁₁₀ (113 B.C.): [ἀναγράψαι] [τὰ] [ὑπάρχοντα] αὐτῶι πρὸς τὰ ἐν αὐτῶι ὀφειλόμενα κτλ; BGU 1757 (52—1 B.C.); BGU 1947 (50—49 B.C.) cf. Schäfer, *Aegyptus* XIII, 618 (v. 4—5) δι ἧς ἐσημαίνετο ἀναγράψασθαι τὰ ὑπάρχοντα Ἡρακλείω Παγούρου τοῦ σιτολογήσαντος; BGU 106 = *W. Chr.* 174 (199 A.D.); Berl. Pap. 11 564 cf. Plaumann, l. c. 57; P. Fam. Tebt. p. 90.

⁸ Tebt. 772 (236 B.C.); Amh. 35 (132 B.C.); Tebt. 53 (110 B.C.); BGU 1827 (52—51 B.C.); BGU 1761 (50—51 B.C.) where the application is refused (v. 13) [κατέχεσθαί μοι τὰ τῶν ἀρουρῶν] γενήματα; Oxy 1102 (146 A.D.): A request was then made by the city delegates to be allowed to keep the revenues of the land and these were awarded to them apparently for one year (v. 16—18).

⁹ Cf. Tebt. 148 (II cent.). A letter from Polemon to his brother Heliodorus about a *χρηματισμὸς κατεγγυήσεως* (?) cf. Tebt. 772 (236 B.C.) καὶ πρότερον κατέστησα ἐπὶ τὸν στρατηγὸν καὶ ἔγραπτα γέγονεν παρ' αὐτοῦ; ἔγραψεν δὲ συσχεῖν τὰ γενήματα κτλ.

¹⁰ Tebt. 14₈₋₁₀; Tebt. 24₉₇; Tebt. 27₁₁₀; Tebt. 742₆; BGU 1794₄₋₅; BGU 106 = *W. Chr.* 174: τὸν πόρον cf. Berl. Pap. 11.564 with Plaumann, l. c. 57 cf. P. Fam. Tebt. 24 (124 A.D.) p. 93, 106 measures for the sequestration of both parties property (v. 107—108) (κατοχή).

¹¹ *Gnom.* § 3; cf. the seizure of κληροῖ in Frankf. 7 and Tebt. 53; on Oxy. 1876 (480 A.D.) comp. Steinwenter, *Neue Urkunden zum byzantinischen Libellprozess* p. 14.

¹² Edg. Zen. 57 (248 B.C.) κατασχεῖν τὰ γενήματα; Tebt. 772₁₀ (236 B.C.) συσχεῖν τὰ γενήματα; Ent. 85₆ (222 B.C.) κοιμισάμενον τὸν σῖτον; BGU 1761₁₃ (51—50 B.C.) [κατέχεσθαί μοι τὰ τῶν ἀρουρῶν] γενήματα; BGU 1827₇ (52—51 B.C.) κατεγγυῆσαι τὸ — γένημα; BGU 1836₂₂ (51—50 B.C.) ἀπολύσαι — τὸ γένημα; BGU 1851 (.....) συντηρῆσαι τὰ ἐκ τούτων γενήματα cf. Oxy 1102 (146 A.D.) revenues.

¹³ Amh. 35₂₂ (132 B.C.) προσκαλεσάμενος τὸν Παλαῶσιν κατεγγυήμας τὸν πυρὸν τοῦ Σοκνοπαίου θεοῦ μεγάλου κτλ.

¹⁴ Ryl. 119₁₃₋₁₄ (54—67 A.D.) μετὰ τὰ ἐν κ[α]τεγγυήσει γενόμενα ἄλλα ἐκφόρια; Gen. 31₁₂₋₁₄ = M. Chr. 119 (145—6 A.D.) τῶν δὲ ἀποκατέσχον παρὰ γεωργοῖς ἄχρι κρίσεως.

A complaint against the ordered seizure is admissible. The purpose of the complain is the repeal of the seizure. Ent. 85¹⁵ and BGU 1836¹⁶ refer to such cases.

II. Sequestration

Mostly related with the seizure is the precautionary measure (safeguard) of sequestration: μεσεγγύημα¹. The sequester is called μεσέγγυος².

The sequestration of a contested thing to be effectuated according to a prefectural edict is mentioned in the edict of Valerius Eudaimon, Oxy 237 VII, 7-18³. It is said there: if an action for debt is brought against somebody and the declaration is not at once made by the defendant that the bond is forged and an action brought by him for the sake of *falsum*, *calumnia* or deception, so his denial is of no use and he must pay at once; otherwise he must deposit the sum and then he may, if he relies upon his proofs, bring a criminal action running the risk of *poena calumniatorum*. The sequestration ordered here is long established law and C. Th. 2, 26, 1 repeats only this prescription⁴.

Otherwise the court orders the sequestration as a rule⁵ without a motion⁶ and namely normally in the course of legal proce-

¹⁵ Ent. 85 (222 B.C.) (v. 2) ἵνα διεθῆ ὁ σῆτος; BGU 1836₂₂ (51—50 B.C.) ἀπολύσαι τὸ γένημα κτλ.

¹⁶ In Oxy 1102 (146 A.D.) complains Eudaimon that his revenues had been impounded, and Cerealis (*hypomnematographos*) replies that they should be released when the terms of his judgement had been complied with (18—22).

¹ Cf. BGU 592 II 9 τὰ γενήματα ἐν μεσουγγύματι (sic!) ἔσται. cf. Mitteis, *Hermes* 32, 655.

² Cf. Preisigke, s. h. v.; P. Meyer, *Arch. f. Pap.* III 97 ff.

³ Cf. Mitteis, *Arch. f. Pap.* I 182—3; from the later literature to this edict cf. Collinet, *Atti Firenze* 89 ff; G. G. Archi, *Scritti Ferrini* I, 1 ff; Maxime Lemosse, *Studi Solazzi* 470 ff.

⁴ Also the ἔκστασις of $\frac{2}{3}$ of the property to the *curia* in CPR 20 (250 A.D.) that of course is based on the seizure of the whole and leaves the calculation of the left free part to the authorities, goes probably back to a prescription of law. Comp. on ἔκστασις and on *νενομισμένον τρίτον*, *W. Chr.* I 204 Introd. and his reference to Dio Cass. 47, 17,1 ff; also Oertel, *Liturgie* 306.

⁵ Cf. my article in *Jura* II 78.

⁶ CPR 18 = *M. Chr.* 84 (124 A.D.) (v. 37) τῆς οἰκίας μενούσης παρὰ τῶ Ἀμμωνίῳ [ένεσ]φραγ[ι]σαμένης; Catt. verso I 13 (ca 141 A.D.) μεσεγγύου ἀντιπόντος cf. P. Meyer, *Arch. f. Pap.* III, 97 „bis zur Austragung des

dings. In BGU 592, II, 9⁷ is a time fixed for the opening of a last will with the statement, would the term not be kept, then *in eventum* a sequestration of the inheritance (*quoad fructus*) would follow: τὰ γενήματα ἐν μεσεγγυήματι ἔσται.

As a sequestrator will be appointed the plaintiff⁸, the defendant⁹ or a third person¹⁰. We don't know if for this fixed rules existed or it was decided at the judge's own discretion. Now and then official organs are carried out as sequestrators. In BGU II 388 Col. 3 v. 7 ff deeds of manumissions sealed are deposited at the βιβλιοφυλάξ¹¹, in Bad. 48 (126 B.C.) the contested matter in dispute at the ἀρχεῖον¹², in Mil. 25 IV, 14 ff (126-7 A.D.) the bond, sealed by both the parties at the usher¹³.

The authority can take measures concerning the sequestered thing during the sequestration. In Drusilla's process the strategos orders that until the settlement of the λογοθεσία the fruits of a year of the sequestered ὑπάρχοντα ought to be turned into money¹⁴. The proceeds will be deposited at the banker¹⁵. Also the revenues of the next year will be turned into money and the proceeds also deposited¹⁶.

Streites, wessen Recht das bessere ist, sind diese Liegenschaften des Apollinaris sequestriert, einem Dritten in Verwaltung gegeben"; cf. J ö r s, *Sav. Z.* 39, 105. On BGU 168 = *M. Chr.* 121 (II cent. A.D.) concerning the transfer of the disputed slave by a provisory order to the plaintiff at the beginning of the process (by an injunction) see Mitteis, *Hermes* 30, 586 ff; comp. also BGU 388 = *M. Chr.* 91 (II cent. A.D.) Col. III (v. 8) καὶ ἐκέλευσεν Σμάραγδον καὶ Εὐκαιρον εἰς τὴν τήρησιν παραδοθῆναι κτλ.

⁷ Cf. Mitteis, *Hermes* 32, 655.

⁸ BGU 168 (v. 12).

⁹ CPR 18 (v. 37).

¹⁰ Catt. verso I 13 see above.

¹¹ τὰς δὲ ταβέλλας ἀριθμῶ πέντε οὐσας καταστημηνάμενος καὶ ποιήσας καὶ τὴν Πτολεμαίδα σφραγίσαι ἔδωκεν Γεμέλλω βιβλιοφυλάκι.

¹² (v. 8) συνεκρίθη κατασφραγισθῆναι αὐτὸ καὶ κεῖσθαι ἐν τῷ ἀρχεῖῳ ἕως ὅτου παραγένη.

¹³ καὶ σφραγισθῆν ὑπὸ τέ σου καὶ τ[ο]ῦ Παυ[λ]εῖνου μενὶ παρὰ Θεῶνι ὑπη[ρ]έτη; [β]τ[αν] γὰρ ὁ Δεῖος πκρατύχη, ὁ[ψ]όμ[ε]θα τί καὶ αὐτὸς περὶ τούτου λέγει, καὶ ἐπέ[τ]ρεψεν τῷ Θεῶνι τὸ ἀκό[λ]ουθον ποιῆσαι κτλ.

¹⁴ Catt. verso IV, 26 ff Ἐπ(ε)ἰ οὖν ἐξαργυρισθέντα τὰ γενήματα [ἐ]θεματίσθη cf. J ö r s, *Sav. Z.* 39, 100 cf. P. Meyer, *Arch. f. Pap.* III, 101 ff cf. 'on θεματίζειν, P. Haun, IV, 9 p. 89 and Preisigke, *Girowesen* p. 185.

¹⁵ Catt. verso IV, 23 ff καὶ ἐκέλευσεν ἐξαργυρισθῆναι ἐνὸς ἐνιαυτοῦ γενήματα cf. Meyer, *Arch. f. Pap.* III, 101.

¹⁶ Catt. verso IV, 32 ὁμοίως κατεστάθησαν καὶ αἱ τῶν ἐξῆς ἐτῶν π[ρ]όσοδοι.

III. *Custodia*

The custody — the official control of the fruits can be ordered, instead of the seizure. There it is said about such a case in *SB* 6814 = *Cair.-Zen.* 59, 179 (255 B.C.). In that papyrus Apollonios writes to Zenon on the subject of certain vineyards which formed part of his δωρεά in the Memphite nome, but which certain cleruchs there claimed as their property. The case had been sent for trial before a judge called Krataimenes. The cleruchs failed however to put in an appointment, in consequence of this Apollonios had written two letters, of which he sends copies to Zenon; one is addressed to Krataines, asking him to give an order that the crop should be kept under watch and the other to Paraponios perhaps an overseer of the Memphite δωρεά instructing him to see that the crop is kept safe after being gathered in (v. 11) συντάξας τὰ γενήματα [δια]τηρήσαι.

From the Roman period there can be taken into consideration *BGU* 613 Col. II v. 12 where the strategos appoints a menager for the testator's property in the country¹. The ἐπιτηρητής is that man who watches the property, who has the custody over the things². He plays the same role as the *missus in bona* in the Roman executorial proceedings³.

IV. Placing under seals

Another measure of the seizure of the property as provisional safeguarding before the sentence is the placing under the seals, but only for fiscal debts¹.

It is said indeed in a letter of Hipokrates² to Nikanor, *Cair. Zen.* 59.454 that Nikanor had the right to enter the house of a free — born woman where Hippokrates happened to be living (v.5) καὶ παρασφραγίζεσθαι ἀλλότρια [σκεύη ὧν σοι] οὐθὲν προσήκόν ἐστιν as if they

¹ Cf. Plaumann, *Idioslogos* 59.

² Cf. P. Meyer, *Griech. Texte aus Ägypten* p. 15₃₂.

³ Cf. *D* 42, 5, 12 pr; 41, 2, 10 § 1; cf. *Pro Quinctio* 27, 84.

¹ Cf. Mitteis, *Privatrecht* 375₇₄.

² Hippokrates was probably the joint farmer of the ἀπόμοιρα mentioned in *N*° 59.367; Nikanor seems to have been an official subordinate to the chief oecome, acting in the present case as a πράκτωρ perhaps identical with the Nikanor of *PSI* 659₁₂.

were seizable for the debt; but it is admitted that the putting of a seal would be lawful on Hippokrates' possessions³.

There is farther mentioned placing of houses under seals in BGU 908 (v.26)⁴ (the time of Traian). We read there: δημόσιοι σιτολόγοι — εἰς τὰς ὑπαρχούσας ἡμῖν ἐν τῇ κώμῃ κατέαξαν ἐνίων οἰκιῶν τὰς θύρας ἐνίων δὲ καὶ ταμεῖα ἐπὶ σφραγίδων, ἐπιχειροῦντες ἀπαίτησαι ἡμᾶς ἐκδῖαν σιτολογίαν ἣς οὐκ ἐνεχρήσαμεν.

We get to know from a statement of a village elderman in Brem. 26 (114—116 A.D.) that they had to watch the houses of persons who had been thrown into prison in consequence of the murder of an εἰρηνοφύλαξ but were unable to perform that, because the most of them are obliged to move to southern districts with another εἰρηνοφύλαξ to search for two persons, therefore they ask the strategos to send them assistance (v.12) ἀξιοῦμεν κελεῦσαι ἐπι[σφραγ]ισθῆ[ν]αι αὐτὰς⁵ καὶ παραφυλάσσεσθαι [δι' ἐτέ]ρας βοθηθείας.

V. Prohibitions of disposal

Closely related with the hitherto measures are the prohibitions of disposal aiming like those to deprive the debtor provisionally of his power of disposal over his property for security of the claims of the creditors. Injunctions of this kind are included in the following papyri.

In Tebt. 776 (early II cent.) a woman makes an application to an oecome, he may order a letter to be written to the epimeletes forbidding him to accept on surety the house of her husband, pledged as security of her dowry and her maintenance which he proposes now to assign as surety for a tax-farmer. This results essentially in a mortgaging prohibition of the house.

Lond. III N^o 1157 (p.111) Col. III = *M.Chr.* 199 (ca 246 A.D.) a creditor makes an application to the strategos for instructions to the βιβλιοφύλακες of the registration of his personal claim before others acquire the rights on the landed property of the debtor and

³ Cf. C 2, 16 (17), 1 Imp. Probus A. Octaviano *Saepe rescriptum est ante sententiam signa rebus, quas aliquis tenebat, imprimi non oportere* cf, my art. in *Mélanges Cornil* II 505.

⁴ Cf. Mitteis, *Privatrecht* 375₇₄; Oertel, *Liturgie* 255.

⁵ As Wilcken remarks that he knows no parallel for such a putting the houses under seal, it is however to be found in BGU 908₂₆; comp. also Mil. 25 IV 33 (126—7 A.D.)

this entry being allowed (v. 12) οἱ τῶν ἐνκτῆ[σεων] βιβλιοφύλακες ἀκόλουθα τῆι ἀξ[ιώσει] πράξαι φροντίσ[ωσι] involved the prohibition of disposal¹.

In Giss. 8 = *M.Chr.* 206 (119 A.D.) Psenaphumis bought ψιλοὶ τόποι from Apollonios by a *chirographum* and subsequently he learned that a certain Petosiris had notified to the bibliothec a *chirographum* emitted by the same Apollonios concerning the sale of the same estates and has the intention to sell them further. He intends therefore to prevent the further alienation and makes an application probably to the strategos, he may inhibit the sale until the question of the property would be decided in a law—suit (v. 13—14) ἐπισχεθῆναι τὴν πρᾶσιν μέχρι ἂν περὶ τούτου κριθῶμεν². Here too it is the matter of the prohibition of the alienation.

In the lawsuit of Drusilla the judge Asclepiades forbids the creditor to take steps with regard to the property of the debtor until the court decides the matter³.

VI. Giving security

The securing of claims by giving security enacted through an injunction is rare in the papyri. Berneker¹ assumes that such a guarantee is to be found in Ent. 74 and 81. When — as he says — a Greek has the intention to bring an action against another Greek in the court of ten men on account of ὕβρις and there was danger that he could die before because of the received wounds so he had the right to apply to the strategos for the injunction to secure his claim for amends till the decision of the court and for the case of his death. But in Ent. 74 it is not the matter of an action for securing but an action for carrying out a liquid claim², in Ent. 81 however not of securing of a claim but of securing of the appearance of the defendant in the court (a bail to produce him)³. On the contrary there is a true giving security for securing of claims

¹ Cf. before all Woess, *Untersuchungen über das Urkundenwesen u. den Publizitätsschutz im röm. Ägypten* 202—3.

² Comp. Woess, l. c. 344 ff.

³ Cf. Catt. verso I 33 μηδὲν οἰκονομεῖν μέχρι κρίσεως cf. Jörs, *Sav. Z.* 39, 110 ff.

¹ *Étud. de pap.* II, 67.

² Cf. as for the execution of such claims Partsch, *Arch. f. Pap.* V, 520.

³ Cf. my *Law I* p. 333₅₃.

to be found in BGU 613 = *M.Chr.* 89 (the time of Anton. Pius) — from the Roman period⁴. It is said in that papyrus that the strategos in the course of a law-suit that was carrying through by him on the basis of a delegation of the prefect passed an ἀπόφασις that (υ 33) αἱ περὶ τῆ<ν> Ἀθ[η]ν[ά]ριον ἰκανὸν παρέξουσι τῶν ἐκ κρίσεως φανησομένων, πάση[ς τε τῆς προσό]δου, ἐξ οὗ τετελεύτησεν ὁ Ἀνθέστιος Γέμελλος that the women that took possession of the inheritance of Antestius Gemellus have to give security for them. It is further remarked that a ὑπηρέτης was charged with the execution of this measure.

VII. Arrest as means of security

When in the case of ὕβρις the life of the injured person was endangered, the defendant had to be held in jail until the result of his attack was apparent and if the plaintiff died, the defendant had to be treated according to „specific provisions”¹. The reason of this obligatory arrest² was of course to prevent an eventual flight of the adversary and to secure by it the assertion of the legal claims of the injured person, resp. of his family.

In this connection there is to be mentioned the confinement to one's house in CPR 20, II, 14 (250 A. D.)³ which was ordained on a stubborn cosmet who has appealed against the entering upon a cosmetie. This confinement at one's own home is to be considered rather as means of coercion than a security means.

VIII. Inhibitions of acts of violence

In a series of papyri concerning immovables the parties make an application to the authorities as follows: μηδενὶ ἐπιτρέπειν ἀποβιάζεσθαι. The provisional character of this order¹ is expressed —

⁴ Cf. Mitteis, *Hermes* 30, 588; my *Gerichtsorganisation Ägyptens in röm. und byz. Zeit*, 51.

¹ Cf. my *Law I* 333.

² On the obligatory imprisonment see my *Strafrecht* p. 65 ff.

³ Cf. Mitteis, *CPR* p. 116.

¹ Cf. such injunctions compiled by Berneker, *Etudes de pap.* II, 66—7; there comes up Tebt. 786 (138 B.C.) μηδενὶ καθ' ὄντινοῦ[ν] τρό[π]ον ἐπιτρέπειν παραλογεῦειν ἡμᾶς μηδ' [ε]ισβιάζεσθαι εἰς τὰς ἄλλως κτλ; BGU 1818_g (60—59 B.C.) μὴ ἐπιτρέπειν αὐτ(ῶ)ι ἐφάπτεσθαι μηδενὸς τῶν ὑπ' ἐμοῦ κατεσπαρμένων cf. Berneker, *Sondergerichtsbarkeit* 186.

— besides Ent. 54² and 69³ — especially in Tebt. 771 (II cent. B.C.). In that petition the house—owner complains that he was disturbed by a woman in his house which he has inherited from his father and asks the strategos (v.23) ὅπως ἐπιτρέπη τῇ Στρατονικ[η] μὴ εἰσβιᾶσθαι εἰς] τὴν οἰκίαν, εἰ δέ τι οἴεται ἀ[δικεῖσθαι λαμβάνειν παρ' ἐμοῦ] τὸ δίκαιον ὡς καθήκει. A marginal decision passed on the basis of such a complain is to be found in Cair. Zen. 59.620⁴.

In the Roman period there occur likewise inhibitions of the act of violence. In Thead. 15 (280—281 A.D.) the governor has so far delegated the matter to the strategos in a law-suit about an inheritance as (v.6) ἵνα τὴν βίαν κωλύσης⁵. The same holds for CPR I 20 I, 9 τὸν δὲ [τ]οῦ νομοῦ στρατηγὸν βίαν γενομένην κωλύσαι εἰ γείνο[ι]το where the governor, perhaps on a special motion of the appellant has issued a preliminary decision whereupon βία γενομένη κωλύται⁶. Of course this *vim fieri vetari*⁷ has yet only a common name with the proper proceedings by interdicts; one sees here clearly the transfer of the classical terms on quite heterogeneous things.

IX. Orders concerning a provisional stay and a provisional maintenance

In Bad. 14 (I cent. B.C.)¹ there is a motion of Philippos, whose father was not a cavalry soldier which indicates that his son, obviously under age, must live at him. The boy stayed evidently in Phourion Tuphis at his uncle where from one would expel him as not belonging to the privileged class. Hence the writer of the cavalry soldiers to whom the motion is directed issues before the examination of the case an injunction (v.11) ἐκβαλέτω [αὐτὸν (sc. Θεογένη) μηδεὶς ἕως] the boy should not be expelled but should provisionally stay over there where he was staying.

² (v. 11) μὴ ἐπιτρέπειν αὐτοῖς ἐγβάλλειν με ἐκ τῶν κλήρων, ἕως δὲ τοῦ διέξοδον λαβεῖν μὴ θερίζειν αὐτούς.

³ (v. 6) μὴ ἐπιτρέπη προσπορεύεσθαι τῶν μὴ καθηκόντων αὐτῶι, ἕως δὲ τοῦ δικαιολογηθῆν[αι] μὴ ἐπιτρέπειν μηδενὶ οἰ[κο]δομεῖν.

⁴ Cf. Berneker, l. c. 66; my art. *Sav. Z.* 55, 284.

⁵ Cf. Mitteis, *Sav. Z.* 32, 346.

⁶ Cf. Mitteis, l. c. 112.

⁷ Comp. also Thead. 19 (v. 21): Τὸ ἀβίχαστον φυλάξει ὁ λογιστής.

¹ Cf. P. Meyer, *Sav. Z.* 44, 606.

In P. Bouriant 20^r = *M.Chr.* 96 (350 A.D.) a law-suit before the *juridicus* concerning the community of property there is among others a question of the alimony of Dionysios by his sister Nonna (Col. II 8—10) and it is ordered that until the appearance in the court of the *curator* of Dionysios supposed to be mad, Nonna is obliged to provide the alimony for Dionysios as in the past, Col. III 39 Τέως καθ' ἃ ἐπηγγίλατο Νόννα σπουδασάτω τὴν χορηγίαν τοῦ τε ἡμίσεως ἄρτου, ἔτι γε μὴν καὶ τοῦ στεγανομίου Διονυσίῳ ἀμέμπτως παρέχ[ειν]; εἰ γὰρ κἂν πρό[ς] τι βραχὺ τῆς χορηγίας τούτων παραμελήσειεν, δυνήσεται πρόσοδον ποιησάμενος τῷ δικαστηρίῳ Διονύσιος τῆς ὀφειλομένης αὐτῷ ἐπικουρίας τυχεῖν.

X. Decrees on restitution

Besides orders which remind of prohibitory decrees we find in the papyri orders which remind of interdicts of restitution, the s.c. *interdicta restitutoria*. Hither belong:

Oxf. N^o 1 (II cent. B.C.). During the absence of the petitioner a λογευτής whose name is Horos, had asked his wife, for the σύμβολα on the pretence that he needed them for the διαλογισμός; he then refuses to return them. The official to whom the petition is addressed only has to make a provisional inquiry into the case and — as we may suppose — to order the provisional restitution, until the competent judges had arrived.

In the Bacchiastexts N^o 1 (198 A.D.) a petition to the *Praefectus Aegypti* the priests made an application to the prefect, he may bid the district-strategos to compel the debtor to repay the 120 drachmas which the priests would unlawfully be constrained to discharge ἕως ἐκδικῆσαι, (until we are right in the end). Hence this order is consequently a provisional order which does not prejudice the final sentence.

On the contrary BGU 19 = *M.Chr.* 85 (135 A.D.) does not belong here where in a law-suit on inheritance before a delegated judge restitution is moved after the sentence being pronounced Col. II 20—21 Ἀσκληπιάδης ῥήτωρ: Τὰς προσόδους ταύτηι τῶν χρόνων ὧν ἐπ[ε]κράτησαν οὗτοι ἀποδότησαν¹. Oxy 2187 (304 A. D.) however, in a case of inheritance the prefect decided that Aristion (probably the *tutor* of the deceased daughter of Thaesis) had to cede the

¹ Cf. Mitteis, *Hermes* 30, 583—4.

property, which she had inherited from her father Amyntianus, to Thaeasis. Then the parties are to pled, without prejudice to the trial which is to take place concerning the inheritance.

XI. Orders impeding the proceedings and the execution

These orders can be issued either before institution of the proceedings, during the proceedings or in the course of the execution.

We find one order of the first kind in Rein. 18 = *M.Ch.* 26 (108 B.C.) where a βασιλικὸς γεωργός who is threatened with an action requests the strategos for an instruction to the ἐπιστάτης τῆς κώμης he ought not to be summoned before the end of sowing. To the same case refers Rein. 19 = *M.Ch.* 27 where in the same matter the βασιλικὸς γραμματεὺς is applied to instruct the ξενικῶν πράκτωρ not to summon him until the sowing is finished.¹ Hither belong farther BGU 1756 (59—8 B.C.). Here the opponent of the petitioner had brought about the summons from the καταλογεῖον therefore from the chrematists and served it on him. Now on the basis of the request of the petitioner the διοικήτης instructs the strategos to protect both the movers, cavalry officers, provisionally, namely until the end of the harvest, against the inconvenience caused by the consequences of the summons. The respective order runs as follows (v. 4 ff) Ἐάνπερ οὖν [ἦι ἀληθῆ παρασχοῦ αὐτοῦς ἀπερισπάστους, μέχρι ἂν ἀπὸ τῆς συν[αγωγῆς τῶν γενη]μάτων γέωνται.

It is a matter of an order issued during the proceedings in BGU 1825 (25 or B.C.). Here a tax—collector who with his son is sued by his wife before the chrematists as to the restitution of the dowry and for sees that being encumbered with the professional duties he will not be able to appear in court asks the strategos to prevent by a writing into the court the issue of a judgement by default and to procure a postponement until the end of the professional duties². In the not quite clear process in P. Warren N^o 1 (164 or 165 A.D.) the prefect L. Sillius Satrianus issues a provisional order (v. 37—39) to the strategos not to do anything to the prejudice of the fisc³.

¹ Cf. Berneker, *Sondergerichtsbarkeit* 72

² (v. 26) μηδὲν καταχρηματίζειν ἡμῶν... μηδενὸς τῶν ὑπαρχόντων μέχρι τῆς ἐκπληρώσεως τῶν] βασιλικῶν.

³ Ὁ στρατηγὸς φροντιεῖ ἕως ἂν τὸ πράγμα[α αὐτὸς κρίνω, μηδὲν ἐπὶ περιγραφῇ τοῦ ταμείου γέινεσθαι].

At last as the provisional orders in the executorial proceedings are concerned, there is in the first instance one in Oxy 1203 (I cent. A.D.)⁴. A notice of the claim has been served upon the petitioners and the petitioners request that copies of their counter — claim ἀντιρρησις should be communicated to Apion the son of the defendant and to the πράκτωρ in order that no further proceedings should be taken pending a legal decision. Further in Giss. 34 = *M.Chr.* 75 (265 A.D.)⁵ the judge orders that the creditor be summoned before the court in Alexandria and that until his decision the state of affairs not be changed that is that the seizure ordered by the chrematists not be carried out.

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⁴ Cf. P. Meyer, *Sav. Z.* 50, 542; my *Law I* 498₁₃.

⁵ Cf. Jörs, *Sav. Z.* 39, 70.